

## Kentucky Resources Council, Inc.

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September 22, 1995

Morris Flexner  
U.S. Environmental Protection Agency  
Region IV  
345 Courtland Street NE  
Atlanta GA 30365

By telefax 404-347-1799

Dear Mr. Flexner:

I am writing as a follow-up on our telephone conversation, to express our concern that your agency not approve the revision to Kentucky's state water quality standards which was submitted for your review on August 11, 1995. I understand that your office is currently reviewing 401 KAR 5:030 "Nondegradation Policy Implementation Methodology," which was submitted for your review by the Commonwealth of Kentucky on August 11, 1995.

The Council and the Sierra Club, Cumberland Chapter, believe that the proposed methodology for implementing the state antidegradation policy is significantly underprotective of those waters in which the water quality exceeds that necessary to support the designated uses, and that the proposed methodology in both scope and content is inconsistent with the antidegradation provisions of 40 CFR 131.12 when measured against the criteria of 40 CFR 131.5, in that the state regulation fails to assure that (1) all waters are presumed of high quality absent data suggesting otherwise; (2) that waters are entitled to the higher level of protection where any water quality parameter exceeds that needed to support the use(s); and (3) that a lowering of the water quality not occur absent a demonstration of necessity and lack of alternatives, and of significant social and economic impacts in the absence of such a lowering of water quality.

We understand that you are obligated within 60 days of submittal if the revision is to be approved, and within 90 if disapproved. In order that we may more fully be heard concerning our objections and concerns, and to allow for a more precise presentation of the legal and policy issues presented by the state regulation when measured against the 40 CFR 131.5 criteria, I am writing to ask that you not take any final action under 40 CFR 131.5 and Section 303(c) of the Clean Water Act with respect to the regulations until after October 1, 1995, in order to allow time for our submittal of detailed objections concerning the inconsistency of the state antidegradation regulation with the state's obligations under 40 CFR 131.6(d) and through it, 40 CFR 131.12.

Thank you in advance for your assistance. A letter detailing our concerns will follow by October 1, 1995.

Sincerely,

*Tom FitzGerald*

Tom FitzGerald

Director

Kentucky Resources Council, Inc.

*W. Henry Graddy IV* (by TF)

W. Henry Graddy IV

Sierra Club Cumberland Chapter